

UKRAINE

STANDARD OPERATING PROCEDURES FOR THE EVALUATION OF A COMPLAINT AND FOR THE INITIATION OF AN ANTI-SUBSIDY INVESTIGATION

CONTENTS

I. USING THIS DOCUMENT IN THE PRE-INITIATION STAGE.....	1
II. ENCOURAGE THE PRESENTATION AND DISCUSSION OF DRAFTS WITH APPLICANTS	2
III. SUMMARY OF THE PRE-INITIATION PHASE	3
IV. RECEIPT AND INITIAL EVALUATION OF A COMPLAINT.....	4
IV.1 and IV.2: Receipt of a complaint and numbering.....	4
IV.3: Informing the Commission.....	5
IV.4: Complaint allocated to investigating officer(s)	5
IV.5: Acknowledgement of receipt	5
IV.6: Official import statistics	5
IV.7: Preliminary review of the complaint to determine whether it is “properly documented”	6
IV.8: Deficiency letter to the applicant or note to the file.....	6
IV.7: Preliminary review of the complaint to determine whether it is “properly documented”	7
IV.9: Information is not reasonably available to the applicant and consequences thereof.....	7
IV.10: Not “properly documented” complaint	9
V. ANALYSIS OF THE COMPLAINT AND PREPARATION OF THE TECHNICAL REPORT ON THE INITIATION.....	11
V.1: General	11
V.2: Imported product and like product.....	12
V.3: Identification of interested parties.....	13
V.4: Examination of standing.....	14
V.5: Examination of the evidence on subsidisation	16
V.6: Examination of the evidence on injury	17
V.7: Examination of the evidence on causal relationship.....	20
V.8: Familiarization/factory/verification visit	21
V.9: Preparation of the Technical report.....	22
V.10: Non-confidential version of the complaint.....	23
V.11: Invitation to pre-initiation consultations.....	26
V.12: Avoid publicising of the complaint	28
V.13: Withdrawal of the complaint	29
VI. INITIATION	30
VI.1: Submission of the Technical report to the Commission	30
VI.2: Commission consideration of the Technical report	30
VI.3: Initiation notice	31
VI.4: Letters notifying the initiation.....	31
VI.5: Adapt the questionnaires.....	33
VI.6: Initiation packs	36
VI.7: Confidential and public files	37
VII. ANNEXES.....	1
VII.1: Checklist to assess the complaint.....	1
VII.2: Excel support sheet	11
VII.3: Standard templates referred to in these SOPs	12

ACRONYMS

Commission	Interdepartmental Commission of Article 4 of the Law
Department	Department on Trade Protection of the Ministry
Director	Director of the Department on Trade Protection of the Ministry
Form	Form for requesting the initiation of an anti-subsidy investigation (standard template)
Guide	Guide to the completion of an anti-subsidy investigation
Head	Head of the Trade remedies Unit, Department of Trade Protection, Ministry of Economic Development and Trade
Law	Law “On protection of the national industry against subsidised imports”, No. 331-XIV of 22 December 2008, as amended
Ministry	Ministry of Economic Development and Trade
SOPs	Standard Operating Procedures
UKTZED	Украинская классификация товаров ВЭД
WTO	World Trade Organization

I. USING THIS DOCUMENT IN THE PRE-INITIATION STAGE

These standard operating procedures (“SOPs”) develop, in detail, every step of an investigation process from first receipt of the complaint to publishing the notice of initiation of an investigation or sending of the rejection letter to the applicant. Steps are broken down into concrete actions to be undertaken. The official responsible are identified. The timing for each action is provided. Finally, concrete results to be achieved are indicated.

The SOPs contain three annexes. The first annex contains the checklist for assessing whether a complaint is properly documented. This document guides the assessment. If it is concluded that the complaint is properly documented, this checklist can be included in the confidential file as a proof thereof. Conversely, if it is concluded that some information or evidence is missing, the checklist can be sent to the applicant for it to take the required action.

The second annex to the SOPs is an Excel sheet listing all steps and actions in chronological order. Deadlines for accomplishing them are provided too.

The third and final annex contains a list of all the standard templates referred to in the text of the SOPs. The electronic version of those templates should be contained in Annex 3.

IMPORTANT:

1. This is a “living” document that the Ministry must update regularly (no less than once a year). Regular updates should be done to the Annexes too
2. Experience gained from cases must be introduced as well as guidance from determinations of local courts or the WTO, in particular.

II. ENCOURAGE THE PRESENTATION AND DISCUSSION OF DRAFTS WITH APPLICANTS

A thorough analysis of a complaint requires considerable time and effort. While the period set forth in the Law (*normally 30 days* (Article 15.13 Law) counted from the date following that of registration of a complaint) may suffice for the Ministry to do the necessary actions and for the Commission to assess the Ministerial report and decide on the initiation, there may be situations where 30 days may be insufficient – e.g. if the initial complaint is not properly documented and part of the 30 days pass until the applicant is able to submit the missing information or when other institutions do not provide information to the Ministry quickly. In any of these situations the Ministry may not be in the position to obtain, examine with the required depth, and present relevant information to the Commission within the 30-day period.

To avoid delays in the initiation of investigations, materials prepared by the Ministry – such as the Form for requesting the initiation of an anti-subsidy investigation (“Form”) and the Guide to the completion of an anti-subsidy investigation (“Guide”) – and Ministry officials should **actively encourage possible applicants** to:

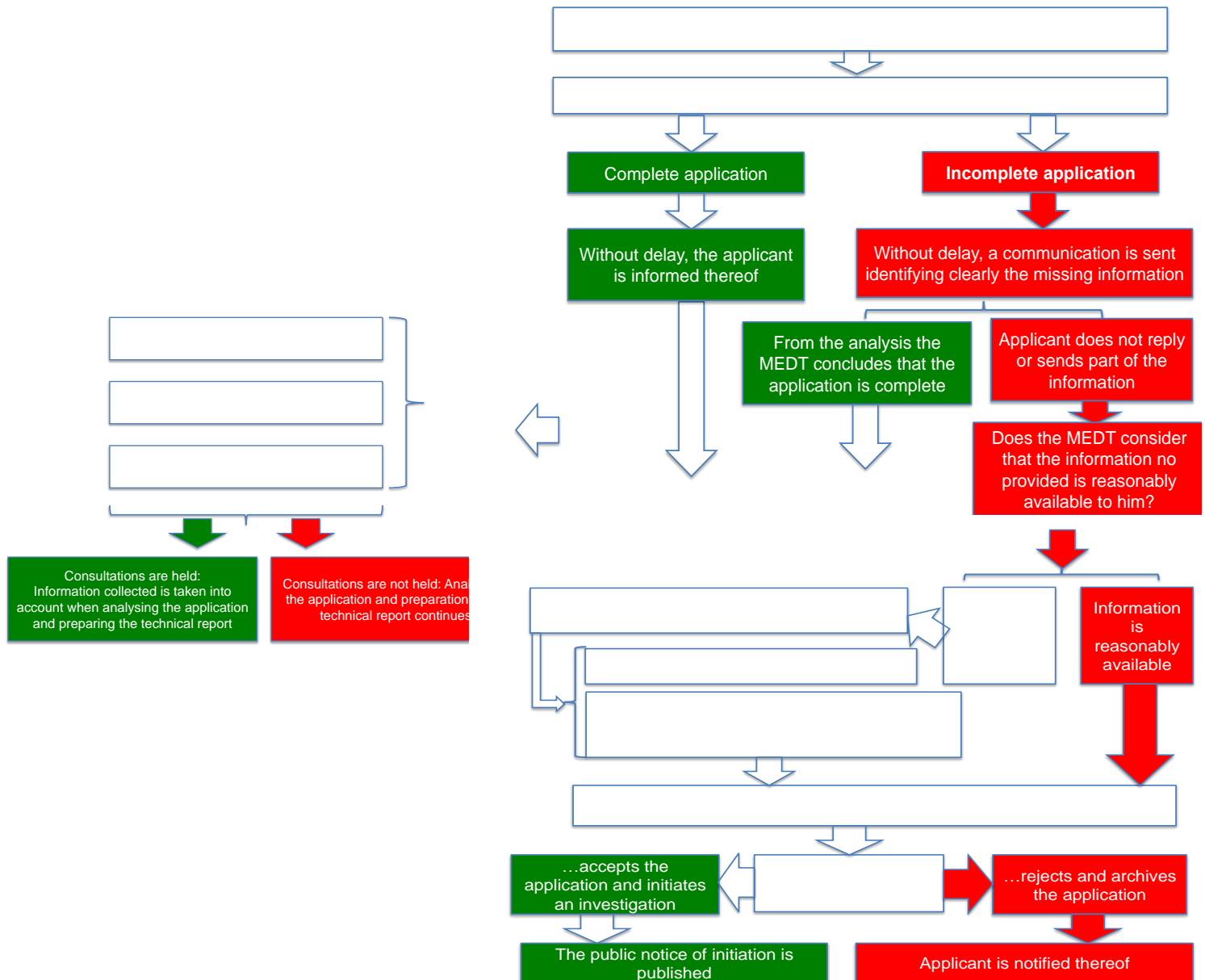
1. **discuss any problems** they face when filling the Form;
2. **submit drafts** before filing the complaint formally to the Ministry and, if needed, **meet with the Ministry** to review them.

The above actions will:

1. **allow the Ministry to guide the pre-initiation process**, anticipating among others possible deficiencies before complaints are formally filed;
2. **help reducing the number of complaints** because possible applicants will be aware, before formally submitting them, of the likelihood that the complaint will be accepted and those anticipating a rejection should normally decide not to file it;
3. ultimately, **increase the quality of the complaints formally submitted and hence diminish the risk of initiating poorly-based investigations.**

III. SUMMARY OF THE PRE-INITIATION PHASE

Graphic of the main steps in the pre-initiation stage:



IV. RECEIPT AND INITIAL EVALUATION OF A COMPLAINT

The complaint shall only be considered formally submitted after **registration**. In case of receiving a complaint by other means (e.g. by email), the Director shall **immediately** inform the party submitting of the legal requirement to register it and of the steps to be undertaken in order to do so. This shall be done in written form.

All time limits in this Chapter are normally expressed as working days (except when indicated otherwise) and are counted from the first working day following that of the registration of the complaint (except when indicated otherwise). When a time-limit is expressed in the form of calendar days and the deadline falls on a non-working day, the time-limit is considered to end the first working day after the non-working day.

Letters or communications of any type addressed to the applicant shall normally be sent by **email** and filed.

This Chapter covers 10 steps and actions to be undertaken under each of the steps. The most important step is the assessment of whether the complaint received is **“properly documented.”** Depending on the outcome of this step, the complaint will be assessed further or not. The ultimate decision on whether a complaint is properly document or not is the responsibility of the Commission.

IV.1 and IV.2: Receipt of a complaint and numbering

On **day 1**, the confidential version of the complaint shall be **date-stamped** and the **pages marked with a sequential marker**, i.e. the last page in the document is page 1, the second last page is page 2, etc., until the front page is reached. In this manner, the most recent document will always be on top in the file. The same shall be done with the non-confidential version thereof.

The complaint shall be given a specific case number.

Regarding filing, see section VI.7 below.

IV.3: Informing the Commission

On **day 1**, the Director shall **send a communication to the chairperson of the Commission informing** of the receipt of the complaint. The communication to him/her shall indicate the product and the targeted country(ies) **(standard template is to be used)**.

IV.4: Complaint allocated to investigating officer(s)

On **day 1**, the Director shall **appoint the investigating officer(s)** in charge of analysing the complaint. Normally, two investigating officers should be appointed.

IV.5: Acknowledgement of receipt

On **day 1**, the Director shall **send a letter to the complainant confirming receipt of the complaint (standard template is to be used)**. The letter should indicate who the investigation officer(s) is(are) and the process going forward (that the investigating officer(s) will consider the complaint and identify any additional information that needs to be submitted).

IV.6: Official import statistics

No later than **day 2**, the investigation officer(s) shall **send a request for import statistics** to the State Statistical Service **(standard template is to be used)**.

Import data need to be analysed to determine that imports from the country(ies) covered by the complaint are **not negligible** and that there are no other countries that might have to be included in the investigation by virtue of the volume of imports or prices from such other countries. It can also be used to

confirm whether there has indeed been a **significant increase in the volume of the allegedly subsidised imports**.

IV.7: Preliminary review of the complaint to determine whether it is “properly documented”

Timeframe: **Maximum 3 days following the receipt of the registered complaint**

The investigation officer(s) shall **use the checklist annexed to this document** to determine the completeness of the complaint and check that:

1. every question of the Form has been answered; and
2. all pertinent supporting documentation requested in the Form has been attached.

To check whether a complaint is properly documented, investigation officer(s) shall assess whether **all answers are properly substantiated with objective and reliable documentation** (regardless of whether the Form mentions the type of evidence to be submitted or not). For instance, injury information should be supported by financial and/or management accounts, adjustments for freight by quotations received from freight forwarders, exchange rates by a printout of the relevant rates from the internet or on the letterhead of an approved bank, etc. Where something is missing, investigation officer(s) shall indicate it in the checklist. Within the 3-day period, the checklist shall be sent to the Head of the Unit and the Director for comments and finalised.

IV.8: Deficiency letter to the applicant or note to the file

This action continues **IV.7**. Depending on the outcome of the preliminary review:

- the deficiency letter **(standard template is to be used)**, listing deficiencies, **or**
- a note to the file indicating that the complaint is properly documented **(standard template is to be used)**

shall be finalised within a **maximum 3 days following the receipt of the registered complaint**.

The deficiency letter, prepared by the investigating officer(s), shall be reviewed by Head of the Unit and the Director and signed by the Director. **All deficiencies should be clearly set out** in the checklist attached to it so that the applicant can, beyond doubt, understand what additional information and evidence must be supplied. The **deadline** for the submission of the reply to the deficiency letter shall be included. The letter shall indicate that unless the requested information is submitted within the said (or an extended) deadline, the complaint shall normally be **rejected and archived by the Commission**.

The note indicating that the complaint is properly documented shall be filed, with the approved checklist attached to it.

IV.7: Preliminary review of the complaint to determine whether it is “properly documented”

Timeframe: **Maximum 2 days following the receipt of the reply to the deficiency letter**

Repeat the analysis explained in action **IV.7** above, to assess whether the complaint – including the reply to the deficiency letter – is “properly documented”:

- If the complaint is now found to be “properly documented”, prepare the **note to the file of IV.8**;
- If the complaint continues to be found **not-to-be-properly-documented**, go to **IV.9 and IV.10**.

IV.9: Information is not reasonably available to the applicant and consequences thereof

Exceptionally, where the Director determines that certain information listed in Article 15.2 of the Law is **not reasonably available to the applicant**, a

complaint, which the Ministry has determined **not to be properly documented**, may be considered further.

Where an applicant argues that certain information is not reasonably available to him, proceed as follows:

After analysing the reply to the deficiency letter, and **within 2 days following the receipt of the reply to the deficiency letter**:

- the investigating officer(s) shall **prepare a note which will identify the information requested in the Form which has not been submitted by the applicant**. The investigating officer(s) shall include any explanations provided by the applicant in order to demonstrate that the information **not provided is not reasonably available to it**. The investigating officer(s) shall include an assessment as to whether the information is actually available to the applicant
- the note shall **be sent to the Head of Unit**. The Head of the Unit shall assess the information in the note and **make the appropriate recommendation to the Director**. The note, including the Director's view, shall be filed.

If the Director's conclusion is that the missing information is **not** reasonably available to the applicant, within the same period of 2 days, the investigative officer(s) shall assess **what information and evidence is required, and the sources of such information**, in order to be able to decide on the initiation of the anti-subsidy investigation and make the corresponding proposal to the Head of the Unit. Once the Head agrees upon the information needed and the sources to obtain it, the investigative officer(s) shall immediately start the research of that information. Where requests to other bodies of the executive power or third parties shall be issued, the preparation of the letters requesting the information needed shall normally take priority over other actions. The investigative officer(s) shall try to obtain information from Internet, where possible. The development of collection of such information shall be regularly checked. Once a week, at least, the investigative officer(s) shall report to the Head of Unit of the

progress made. Depending on the situation, alternative options shall be proposed by the investigative officer(s).

IV.10: Not “properly documented” complaint

Timeframe: **Maximum 3 days following the receipt of the reply to the deficiency letter**

Where it is determined that a complaint is **not** properly documented, and the Ministry further concludes that the information **not** provided was reasonably available to the applicant, **the note to the file referred to in section IV.9 shall be sent to the Commission.** This note will contain the following information:

- Enumerate the information that has been submitted by the applicant, and the information which has not;
- Indicate the efforts done by the Ministry in order to obtain the information from the applicant;
- Include the analysis and reasons of the Director of the Department regarding the fact that the information was reasonably available to the applicant;
- Recommend the Commission to reject, and archive, the complaint based on Article 15.13 of the Law.

Two possible options:

1. If **the Commission agrees that the complaint is not properly documented**, the investigative officer(s) shall prepare a draft letter communicating to the applicant that an investigation will not be initiated on the ground that the complaint is not properly documented. This letter shall indicate in detail which information is missing, the actions undertaken by the Ministry in order to try to obtain the information from the applicant as well as any other information relevant. Since this determination may be challenged before the Courts, the letter should be as comprehensive as possible.

Within a maximum of 3 days following that when the Commission decides that the complaint is not properly documented, the letter shall be prepared, reviewed by the Head of the Unit and Director, finalised, signed by the Director and sent to the applicant. A copy shall be included in the file.

Based on **Article 15.13 of the Law**, the above letter shall be communicated to the applicant **within 45 calendar days** from the date of lodging of a complaint.

2. In case that **the Commission takes the view that the complaint is properly documented**, the Department should continue its analysis of the information aimed at assessing the merits of the complaint, with the information available in the file. If the Department considers that the evidence available is insufficient, this matter should be raised again in the Technical report on the initiation of an anti-subsidy investigation.

V. ANALYSIS OF THE COMPLAINT AND PREPARATION OF THE TECHNICAL REPORT ON THE INITIATION

V.1: General

The analysis of the complaint shall follow this order:

1. examination of the imported and like product;
2. examination of standing;
3. examination of the existence of the substantive requirements (subsidization, injury and causality).

The Department shall examine as thoroughly as possible the information contained in the complaint against data from reasonably available sources (such as bodies of the executive power, associations and private parties, Internet etc.). An on-the-spot visit to the applicant may take place where required.

The technical report shall summarise all the relevant information collected and indicate which information has been verified and how. The sources of the information shall be indicated too. The report shall be divided clearly by substantive topic and present recommendations on each of the topics to be decided by the Commission. In case the initial complaint is determined to be properly documented, this report shall be sent to the Commission **no later than calendar day 25 following that of registration of the complaint**.

The Ministry may consider necessary to clarify information provided in the complaint. In this case, one or more written requests for clarification may be addressed to the applicant. In case of need, a meeting with the applicant may be convened. Letters or communications of any type addressed to the applicant shall normally be sent by **email**.

All time limits in this Chapter are normally expressed as working days (except when indicated otherwise) and are counted from either the date when it is determined that the complaint is properly documented or from

the date when, in spite of the complaint not being properly documented, it is determined that it shall not be rejected because the missing information is not reasonably available to the applicant (except when indicated otherwise). When a time-limit is expressed in the form of calendar days and the deadline falls on a non-working day, the time-limit is considered to end the first working day after the non-working day.

V.2: Imported product and like product

The **imported product** is the product with respect to which the applicant requests the initiation of an investigation. The **imported product** shall be determined first. The investigating officer(s) shall summarise all the relevant information submitted by the applicant in the draft technical report. Where necessary, request for clarifications of the information submitted shall be sent to the applicant.

The scope of the investigation shall be defined as accurately as possible to minimize future questions about product coverage and avoid unintentional product coverage. The investigating officer(s) shall examine if the scope of the investigation includes products in which the applicant has no interest. Investigating officer(s) should examine whether the applicant has unintentionally included products that are not produced domestically.

Within 2 days, the proposed definition of the product under investigation should be informed to the State Customs Service (**standard template is to be used**) which should be invited to comment, in particular in respect of the feasibility to apply any duties eventually imposed on the same. Depending on the comments received, a meeting with the applicant (and the State Customs Service) may have to be convened to discuss the need for possible changes to the definition.

Within the same deadline, the investigating officer(s) shall summarise in the draft technical report all the relevant information submitted by the applicant

with respect to the **like product**. Where necessary, one or more requests for clarifications of the information submitted shall be sent to the applicant.

The investigating officer(s) shall **state their views** with respect to the likeness of the product manufactured in Ukraine with the imported product. These views shall take into consideration the factors that shall normally be examined in order to assess likeness. In case that the like product is made out of imported inputs/parts/components, the investigating officer(s) shall in particular examine what is the percentage of the value added in Ukraine.

Should there be any change to the definition of the imported product, the investigating officer(s) shall **automatically re-examine the definition of the like product**.

Information required for this analysis:

- Information regarding the technical characteristics, production process, inputs, uses, functions, etc. of the imported product and of the like product. This information will often be sourced from domestic producers. Third party assessments (including assessments made in the context of trade defence investigations conducted by other countries), however, may be very useful

V.3: Identification of interested parties

Identification of the possible interested parties is necessary for the purposes of conducting a proper standing assessment and for notification purposes.

Within 5 days, the investigating officer(s) shall have a **list of all, or of the largest, producers** of the like product in Ukraine. This list shall include full contact details of the producers of the like product that 1) submit the complaint, 2) support the complaint, 3) expressly oppose the complaint and 4) other domestic producers. To the extent possible, the focus should be a **recent and representative period of time**, e.g. during the last year before the date of lodging the complaint. For 1) to 3), production data should be included in the

complaint or should be provided directly to the Ministry. To obtain information regarding “other domestic producers” and to check the information provided by 1) to 3), where official production statistics are maintained, the investigating officer(s) shall contact the body at stake **without delay** in order to request the names, contact details and production volume of Ukrainian producers (broken down by company). Where there are no official production statistics, sectoral associations or organisations may have them. Where this is the case, the investigating officer(s) shall contact them **as quickly as possible** and request such information. Lastly, where necessary production data may be calculated by **indirect means**, e.g. by analysing imports of inputs used for the production of the like product, the investigating officer(s) shall contact the State Customs Service **without delay** and request import data of key inputs for the production of the like product, broken down by importer.

Within 10 days, the investigating officer(s) shall have a **list of all exporters and importers, or of those representing a large portion of exports and imports**. The list of importers and foreign producers/exporters shall be requested in the communication to the State Customs Service referred to in section V.2 above.

Information required:

- List of domestic producers and their production volume of the like product
- List of exporters and importers of the product with respect to which the applicant requests the initiation of an investigation

Issues related:

- Standing determination (section **V.4**)
- Notifications to interested parties (section **VI.4**)

V.4: Examination of standing

Legal basis: **Article 15.8 of the Law**

Within 5 days, it must be determined whether the applicant (whether it is one or more companies, or one or more associations) **that lodged the complaint has standing.** This assessment shall be done as quickly as possible because if the standing requirement is not met, **no investigation can be initiated** regardless of whether other requirements are met. Hence, if there is **no** standing, the investigative officer(s) shall prepare a draft communication presenting the pertinent facts and proposed recommendations. This draft shall be sent immediately to the Head of Unit and the Director, for review and approval. As soon as it is finalised, the Director shall send the communication to the Chairperson of the Commission for consideration. No further analysis of the complaint is necessary unless the Commission were to disagree on the existence of standing.

If **the Commission agrees with that the applicant does not have standing,** the investigative officer(s) shall **prepare a draft letter communicating to the applicant that an investigation will not be initiated based on the lack of standing (standard template is to be used).** This letter shall indicate in detail the reasons for such a conclusion as this determination may be challenged before the Courts. **Within a maximum of 3 days following that when the Commission decides that the applicant does not have standing,** the letter shall be prepared, reviewed by the Head of the Unit and Director, finalised, signed by the Director and sent to the applicant. A copy shall be included in the confidential file.

Two criteria shall be met for standing to exist:

- the applicant must represent at least 25% of total domestic production volume of the like product; *and*
- by **production volume**, there must be more support for than opposition against the complaint.

This is all that is technically required for standing. Note that there are **two tests** and that **both must be met** in order to conclude that there is standing.

Information required for this analysis:

- **Production data broken down by each Ukrainian producer of the like product**, if possible. At least, this is necessary for the companies applying for the initiation of an investigation (if there is more than one company) as well as for those which are supporting it
- **Data shall be in comparable units of measurement and periods of time**. If one party provides data e.g. in kilograms and another party submits data in e.g. square meters, it must all be brought to kilograms or square meters in order to analyse standing
- Data included in the application **shall be verified** using sources reasonably available to the Ministry (**as a reference, see action V.3 above**)

Issues related:

- Determination of the like product and of the domestic producers of such product

V.5: Examination of the evidence on subsidisation

Legal basis: **Article 15.3 of the Law**

Time frame: **Within 12 days**

This is a very important part of the overall examination of the complaint. An error at the initiation stage may have as a consequence the invalidation of all actions after initiation of an investigation. This step may be subject to review by WTO panels. Two panels ([US — Countervailing Measures \(China\)](#) and [China – GOES](#)) have so far examined claims regarding the inconsistency of initiation determinations, which provide important guidance in examining the information on subsidisation.

The investigating officer(s) shall first of all ensure that **all information required is provided for each programme alleged to be a countervailable subsidy**. The table contained in the draft technical report should summarise all

information contained in the application. Second, based on the supporting evidence contained in the complaint or obtained from other sources, the investigating officer(s) shall **assess whether there is *prima facie* evidence that each programme involves a financial contribution, from a government or a public body, which confers a benefit to its recipient.** The investigating officer(s) should further **assess whether there is *prima facie* evidence that each programme is specific.** These assessments, and consequent conclusions, shall be done separately for each programme covered by the complaint. Only where the answer to all the above questions is positive, the investigating officer(s) may recommend the initiation of an investigation with respect to a particular programme.

The investigating officer(s) shall **prepare a list of questions to be posed to the exporting country at stake during the consultations.** These questions may seek to clarify the legal bases for the programmes, implementation-related questions etc. regarding the subsidy programmes referred to in the complaint. Questions may be posed as well regarding programmes not referred to in the complaint but which may be used by the exporters.

Main information required for this analysis:

- Normative acts regulating the subsidy programmes covered by the complaint
- Evidence that the exporters benefit from those programmes and that the margin of subsidy exceeds the *de minimis* threshold

Issues related:

- Pre-initiation consultations (section V.11)

V.6: Examination of the evidence on injury

Legal basis: **Article 15.3 of the Law**

Time frame: **Within 9 days**

As is the case for subsidisation, various WTO panels have examined the compliance of injury assessments in initiation determinations. This is for instance the case in [Guatemala – Cement II](#) and [Mexico – Steel pipes and tubes](#). Guidance provided by these panel reports shall inform the assessment of the complaint.

Proceed as follows:

First, the investigating officer(s) shall **conduct a desktop verification**, i.e. check, of all injury information presented in the complaint against the documentation annexed thereto (financial statements, management accounts, summary of production, sales and stocks ledgers etc.). This check shall be done separately for each producer that submits the complaint.

If after this initial review there is a need for **clarifications**, a letter should be immediately drafted to the domestic producer at stake and sent after being approved by the Head of Unit. Such clarifications will be required for instance when:

- the information provided does not match internally, e.g. when sales are more than production plus opening stock if the applicant does not import, or when opening stock plus production less sales equals closing stock, etc.
- it is not clear if the information provided relates to the like product only or to other products too
- methodologies to e.g. allocate certain costs, production capacities, investments etc. among products are not clear or diverge from the methodology recommended to be used by the Ministry or by other domestic producers

Remember that information of each producer should be **treated in confidence and shared only with the owner of the information** and, if expressly contemplated in the reply to the Form, with the association or consultant that files the complaint. If required, an **on-the-spot visit** may be arranged. Similarly,

if considered necessary a **meeting with the applicant** can be convened to discuss injury-related issues.

After having checked and *prima facie* validated the information for each producer submitting the complaint, the investigating officer(s) shall **fill out the tables jointly presenting the information available** for each of the injury factors for which data have been submitted by the producers submitting the complaint.

Next, the investigating officer(s) shall **assess the information verified and available**, on each of the following:

- the development of import volumes of allegedly subsidised products,
- prices – the examination shall cover whether there has been price undercutting, depression or suppression during a recent and representative period of time for which information is available (i.e. information is not required on all three price injury factors)
- industry performance, e.g. volume and/or value of sales, production, profit, market share, etc. It is not required by the WTO that information be submitted on all factors at this stage; hence, if an industry has submitted proof that sales and production decreased, that it has lost market share and that its profit has decreased, this may very well be sufficient to establish a *prima facie* case of injury.

The investigating officer(s) shall **assess whether the volume of subsidised imports from each of the countries covered by the complaint exceeds the negligible volume of imports threshold**. This step may be complex where an UKTZED code includes products not covered by the complaint. In this case, the investigating officer(s) shall **either manually separate imports of the product considered (in volume and value) from other imports or develop and apply a methodology which would permit to separate those imports (in volume and value)**.

Next, the investigating officer(s) shall assess the information relating the industry performance and set out their **findings and conclusions separately, for each factor considered.**

The investigating officer(s) shall then **assess all injury factors jointly** and draft a **reasoned conclusion** on whether the applicant appears to suffer material injury.

In case that the complaint is based on the existence of **threat of material injury**, the investigating officer(s) shall, in addition, examine information regarding the factors of **Article 13.9 of the Law.**

Finally, if presentation of actual figures could disclose individual information about the producer(s) submitting the complaint (e.g. where there is only one, or two producers), the investigating officer(s) shall **prepare a non-confidential version – using indices or ranges – of the information presented in the tables.** These tables will be included in the non-confidential version of the technical report which will be placed in the public file in case of initiating the investigation.

Main information required for this analysis:

- estimated consumption of the product considered
- financial information from each of the producers submitting the complaint

Issues related:

- Examination of a causal relationship (section **V.7**)

V.7: Examination of the evidence on causal relationship

Legal basis: **Article 15.3 of the Law**

Time frame: **Within 12 days**

Similarly to subsidisation and injury, the investigating officer(s) shall:

- examine evidence on causation and factors other than subsidised imports as supplied in the complaint;
- search, through reasonably available public resources, whether there are any factors other than subsidised imports that may have caused injury to the domestic industry;
- assess whether there is *prima facie* evidence of the existence of a causal relationship between the allegedly subsidised imports and the injury to a domestic industry and on whether there are factors other than imports which are at the same time injuring the domestic industry;
- propose recommendations to the Commission on this matter.

Main information required for this analysis:

- Information on subsidisation and injury; information on other factors which at the same time are affecting the domestic industry

Issues related:

- Examination of subsidisation and injury (sections **V.5 and V.6**)

V.8: Familiarization/factory/verification visit

Time frame: **Within 10 days**

This action is **not compulsory**. Such visits shall take place where there is a **clear justification** and if doing them will **not compromise** the ability to complete the assessment of the complaint within the set time frame. They shall be approved by the Director.

Where the investigating officer(s) consider a visit necessary, they shall immediately contact the Head of Unit and the Director and justify the need for the company visit. A reason for the visit is to verify injury aspects of the complaint. However, there may be other valid reason such as learning about the product considered or to obtain further details relevant to the causality assessment. Minutes of the factory visit or on-the-spot verification shall be

drafted as soon as possible after conclusion of the visit/verification and filed. If as a result of the visit, changes to the complaint are considered necessary, the investigating officer(s) shall prepare the letter to the applicant as soon as possible after conclusion of the visit and send it to the Head of Unit and to the Director for review, approval and signing.

V.9: Preparation of the Technical report

Legal basis: **Article 15.13 of the Law**

Time frame: **Within 14 days** from the date when it is determined that the complaint is properly documented

The investigating officer(s) shall **prepare the draft technical report based on the standard template**. This template, as well as previously published reports, shall be taken as a reference. No change to the template can be made without the prior approval of the Director.

The investigating officer(s) shall **address all the questions covered**. They shall **present, in each section, all the data pertinent** to the question addressed by that section. Where conclusions are required, the investigating officer(s) shall **offer their views and recommendations**, which shall be duly explained and justified.

Preparation of the technical report should start as soon as possible after receipt of a registered complaint. **The existence of deficiencies in the initial complaint shall not prevent the investigating officer(s) from starting the preparation of the technical report.**

The investigating officer(s) shall inform regularly – **no less than once a week** – the Head of Unit and the Director about the progress done as well as of any problems faced. **No later than 10 days counted from the date when it is determined that the complaint is properly documented** the complete draft technical report shall be sent to the Head of Unit and the Director for their review. **Between day 10 and 14, the technical report shall be discussed and**

finalised. The final version shall contain **recommendations on all questions in which the Commission shall decide.**

Immediately after its finalisation, the technical report shall be **sent to the Chairperson of the Commission.** If the Commission has major comments on technical questions, the Ministry shall take note of all these comments and within the shortest possible timeframe (which will depend on the nature and depth of the comments), **review the technical report and submit it again** to the Commission for consideration. The investigating officer(s) shall **prepare a revised draft technical report** which shall be submitted to the Head of Unit and Director within the deadline set forth by the Director.

Once finalised, the **confidential version** of the technical report shall be **filed in the confidential file.**

A **non-confidential version** of the technical report shall be prepared by the investigating officer(s) **within 2 days following that on which the Commission decides to initiate an investigation or reject the complaint.** This version shall be based on the confidential technical report from which the confidential information shall be removed. The non-confidential version must be ready for sending it to interested parties in the notification of section **VI:4** below. The draft non-confidential version shall be **reviewed and approved** by the Head of Unit and the Director. After approval, the **non-confidential version** of the technical report shall be **filed in the public file.**

Information required:

- Information, analysis and recommendations on subsidisation, injury, causality and other matters to be presented in the report

V.10: Non-confidential version of the complaint

Legal basis: **Article 15.9 of the Law**

Time frame: **Within 3 days** from the date when it is determined that the complaint is properly documented

The non-confidential version of the complaint shall be provided/sent/made available to various interested parties and included in the public file. The non-confidential version of the complaint shall meet the requirements set forth in **paragraphs 1 and 2 of Article 31 of the Law**. Guidance on the interpretation and application of the relevant provisions of the WTO Agreements (Article 6.5 of the Anti-Dumping Agreement, Article 12.4 of the Subsidies and Countervailing Measures Agreement and Article 3.2 of the Safeguards Agreement) can be found in multiple panel and Appellate Body reports, including [China – Broiler Products](#), [China – HP-SSST \(Japan\)](#) and [EC – Fasteners \(China\)](#).

Immediately upon determining that the complaint is properly documented, the investigating officer(s) shall start checking the non-confidential version of the complaint – including any additional information submitted in reply to deficiency letters – to ensure the following:

- consistency with the confidential version;
- confidentiality claimed in each instance;
- proper claims (valid reasons) for confidentiality; and
- ensuring proper and accurate non-confidential summaries of confidential information or reasons for inability to summarise some information.

Proceed as follows when checking the non-confidential summary of the complaint and any additional information submitted in reply to deficiency letters:

Regarding **consistency**, the investigating officer(s) shall **ensure that the non-confidential summary of the complaint is identical** to the confidential version of the complaint except where information has been claimed to be confidential.

The investigating officer(s) should **check that confidentiality is claimed in each instance where information is regarded to be confidential**. An applicant cannot simply provide a list indicating e.g. that the information in

sections a, e, g and j is confidential, but has to indicate this specifically in each instance.

In addition to claiming confidentiality in each instance, the investigating officer(s) should also **ensure that reasons are given for each claim of confidentiality**. A blanket statement that the information is confidential is **not** acceptable and it has to be indicated, first, whether the information is confidential by nature or otherwise, and, second, how the information meets the test for confidentiality, e.g. that release of the information would be of significant competitive advantage to the party's competitors or that releasing the name of the party that supplied certain information would be detrimental to that person, etc.

Finally, the investigating officer(s) shall **check that the non-confidential version is an accurate reflection of the confidential version**. Thus if actual sales decreased from 512,000 to 488,500 to 300,000, the non-confidential version must – at the very least – indicate (if indexing is used) that sales have decreased from 100 to 95 to 59. However, this may not be sufficient, as one WTO panel has indicated that some sort of order of magnitude shall also be provided to enable other interested parties to understand the essence of the information. For this reason, it is recommended that investigating officer(s) request the applicant to indicate, in addition to the index, that sales in the first year exceeded 500,000 units (or were between 450,000 and 500,000 units) or something similar.

Where information **cannot** be provided in a non-confidential summary, e.g. the name of a person providing certain information, the investigating officer(s) should also **ensure that it is clearly indicated why the information cannot be summarized and why the information also cannot be made available publicly**.

Where, after the review of the complaint and any additional information submitted in reply to deficiency letters, the investigating officer(s) **conclude**

that the non-confidential summary(ies) do not meet the minimum transparency requirements they shall **draft a letter** indicating in detail why the non-confidential version cannot be accepted or certain elements are deficient **(standard template is to be used)**. This letter shall remind the applicant that failure to comply with the obligation of Article 31 may have as a consequence the rejection of the confidential information for which a non-confidential summary in accordance with Article 31 is not provided. A deadline should be included taking into consideration the extent of the deficiencies. This letter shall be sent to the Head of Unit and the Director for approval, before being sent to the applicant.

Within 2 days after receiving the reply to the deficiency letter, the non-confidential summary shall be reviewed again. In case the investigating officer(s) are of the view that the revised non-confidential version:

- complies with Article 31, they shall **prepare a note for the file indicating so and include the revised version in the public file;**
- does **not** yet comply with Article 31, they shall **prepare an internal note indicating in detail why it continues not to be in compliance.** This note shall be sent to the Head of Unit and the Director who shall **decide on the rejection** of the confidential information for which a non-confidential summary in accordance with Article 31 is not provided.

Main information required for this analysis:

- Non-confidential version of the complaint prepared by the applicant

Issues related:

- Pre-initiation consultations and notification of the initiation

V.11: Invitation to pre-initiation consultations

Legal basis: **Article 15.9 of the Law and Article 13.1 of the Agreement on Subsidies and Countervailing Measures**

Time frame: **Within 5 days** from determining that the complaint is properly documented

The investigating officer(s) shall **prepare a communication inviting for consultations** the authorities of the exporting country(ies) against which the investigation is requested to be initiated **(standard template is to be used)**. The non-confidential version of the complaint shall be attached. The communication shall be addressed to the attention of the commercial attaché of the country(ies) concerned accredited in Ukraine. If the country(ies) concerned does/do not have representation in Ukraine, the communication should be addressed to the Head of the Mission of the country(ies) concerned to the WTO. In this case, the communication shall be sent to the Mission of Ukraine before to the WTO with a request to forward it to the country concerned.

The draft communication shall be **sent to the Director, for approval and signing**. A copy of the communication shall be included in the confidential file.

In case that the country(ies) concerned replies(y) favourably to the offer for consultations *before the initiation of the investigation*, the Director shall do the needful to **organise the logistics**. The investigating officer(s) shall **study carefully all the information available in the file**, especially that contained in the complaint, and **draft questions**. They shall be sent to the Head of Unit and the Director sufficiently in advance of the start of the consultations.

The consultations are aimed at “clarifying the situation” with respect to the matters covered by the complaint and “arriving at a mutually agreed solution”. In practical terms, the country concerned shall be invited to **formulate comments**, supported by evidence, with respect to the subsidisation allegations made in the complaint. The Ministry may **pose questions** to clarify technical aspects such as the authorities involved in the administration of particular programmes, regulatory framework etc. Regarding mutually agreed solutions, if the country(ies) concerned make(s) such a proposal, the Ministry may request to develop it in as much detail as possible orally and subsequently in writing.

The investigating officer(s) shall prepare the **minutes of the consultations within 5 days from their conclusion**, which shall be sent to the Head of Unit

and the Director for approval. Once finalised, they shall be included in the confidential file.

V.12: Avoid publicising of the complaint

Legal basis: **Article 15.9 of the Law**

Time frame: **From receipt of a complaint until the decision of initiating an investigation is adopted**

All officials from the Ministry **shall refrain from publicising the receipt of a complaint until the Commission decision to initiate an investigation has been made.** When contacting officials in other bodies of the executive power and they are made aware of the filing of a complaint, the investigating officer(s) should inform them of the obligation not to publicise any information with respect to it. When contacting any other parties, the investigating officer(s) shall avoid informing of the existence of a complaint. Indirect means should be used to e.g. obtain information from any such party if there is a risk.

Should the investigating officer(s) be contacted by anyone to confirm the existence of a complaint, or to obtain any information regarding it or its examination, they shall:

- **neither acknowledge nor deny the existence of such a complaint** and
- **not provide any further information.**

This obligation also applies to the Members of the Commission, or their assistants, until the moment when the Commission formally decides to initiate an investigation.

In case of **rejection of a complaint**, the Ministry (and the Commission) shall also avoid publicising **any** fact related with the complaint. **Only the applicant** shall be informed of the situation throughout the process of considering the complaint and of the reasons for its rejection.

V.13: Withdrawal of the complaint

Legal basis: **Article 15.12 of the Law**

Time frame: **From receipt of a complaint until the decision of initiating an investigation is adopted**

Within 1 day after receipt of a communication withdrawing the complaint, a communication addressed to the applicant shall be prepared by the investigating officer(s) indicating that the complaint is considered as if it had not been lodged **(standard template is to be used)**. The communication shall be sent to the Head of Unit and the Director for approval and signing. A copy of the letter shall be forwarded to the chairperson of the Commission. Another copy shall be included in the confidential file. The file shall be archived.

VI. INITIATION

VI.1: Submission of the Technical report to the Commission

As indicated in section **V.9**, within the time frame of **14 days**, the technical report shall normally be **sent to the Chairperson of the Commission**. This report should contain all the confidential information and recommendations from the Ministry on all matters which have to be decided by the Commission.

VI.2: Commission consideration of the Technical report

The Commission shall normally decide whether or not to initiate an investigation within **5 calendar days** from receipt of the technical report. Its decision shall be based on the information, analysis and recommendations contained in the technical report, but may take other factors (e.g. public interest issues) into consideration.

The Ministry shall address, orally – during the meeting convened to assess the technical report – or by written form – within the deadline agreed with the Commission – any questions or requests for clarification of the Commission.

As indicated in section **V.9**, depending on the comments received the Ministry may have to amend aspects of the technical report and resubmit it.

The Ministry shall prepare detailed **minutes** of the Commission's analysis of the technical report and of the Commission's reasons for initiating an investigation or rejecting a complaint. These minutes shall be placed in the confidential file. These minutes could be important in case of a challenge of the initiation decision.

In case that the Commission decides not to initiate an investigation, the investigative officer(s) shall **prepare a draft letter communicating to the applicant that an investigation will not be initiated (standard template is to be used)**. This letter shall indicate in detail the grounds based on which the

Commission has concluded that the investigation should not be initiated. Since this determination may be challenged before the Courts, the letter should be as comprehensive as possible.

Within a maximum of 5 days following that when the Commission decides that the investigation shall not be initiated, the letter shall be prepared, reviewed by the Head of the Unit and Director, finalised, signed by the Director and sent to the applicant. A copy shall be included in the file.

Based on **Article 15.13 of the Law**, the above letter shall be communicated to the applicant **within 45 calendar days** from the date of lodging of a complaint.

VI.3: Initiation notice

Legal basis: **Article 15.14 of the Law**

Time frame: **Within 1 day from the date of adoption of the decision to initiate an anti-subsidy investigation**

The investigating officer(s) shall **draft an initiation notice** that contains all the relevant information for publication in the Uriadoviy Kurier (**standard template is to be used**). At a minimum, this notice **shall include the information enumerated in Article 15.14 of the Law**. The draft shall be sent to the Head of Unit and the Director for approval.

Within the same time frame, the investigating officer(s) shall **contact the publishing office and arrange space** for the publication of the initiation notice. As soon as the initiation notice has been finalised, **send it to the publisher**.

VI.4: Letters notifying the initiation

Legal basis: **Article 15.15 of the Law**

Time frame: **Preparation: within 2 days from the date of adoption of the decision to initiate an anti-subsidy investigation; Sending: within 1 day**

from the date of publication of the notice of initiation in the Uriadoviy Kurier

Once it has been decided to proceed with an investigation, and while awaiting publication of the formal initiation notice, the investigating officer(s) **shall prepare the notification letters** to the various interested parties (**standard template is to be used**). These include:

- the applicant and other domestic producers,
- government(s) of the exporting country(ies),
- importers,
- foreign producers/exporters,
- other identified interested parties, such as associations and upstream or downstream industries.

Remember to also include the European Commission, in case there is an investigation against any EU Member.

This letter has to be sent to **every single known interested party**. It **cannot** be sent only to the foreign producers/exporters' associations, where there are many. The only difference when there are many foreign producers/exporters is that each exporter does **not** have to be supplied with a copy of the non-confidential complaint, but **each party shall be notified of the initiation of the investigation**. This letter should again indicate the identity and contact details of the investigating officer(s) and draw interested parties' attention to the deadline for submissions, the requirement to request any clarification by a specific date, as well as the requirements if an extension is sought. The letter should also inform interested parties of the consequences of non-cooperation. Where it is anticipated that there may be many parties and the Ministry may not be able to investigate all of them, the notification should indicate that the Ministry reserves the right to sample. Depending on the number of parties that register to participate in the investigation, a sample may have to be selected. In the case of the letter to the authorities of the exporting country, an invitation to continue consultations shall be included.

A copy of each notification letter shall be **placed on both the confidential and public files** once they have been sent out along with the other initiation documents. The letters shall be numbered and paginated.

Issues related:

- Non-confidential complaint (section **V.10**)
- Questionnaires (section **VI.5**)

VI.5: Adapt the questionnaires

Legal basis: **Article 16.3 of the Law**

Time frame: **Preparation: within 5 days from the date of adoption of the decision to initiate an anti-subsidy investigation; Sending: normally, within 1 day from the date of publication of the notice of initiation in the Uriadoviy Kurier**

Decisions are to be made normally based on the information provided by interested parties. The Law requires that the Ministry prepares and sends detailed questionnaires to the different interested parties. These questionnaires shall normally **be sent out together with the initiation notifications**. As an exception, if there is a large number of foreign producers or exporters, importers or domestic producers, the Director may decide to first receive expressions of interest to participate in the investigation and only after confirming that all parties can be investigated, send the respective questionnaires. Conversely, if the number of parties is considered to be too large bearing in mind the resources available and the timeline for the completion of the investigation, the investigating officer(s) shall prepare an internal note presenting the pertinent facts and recommendations to the Head of Unit and the Director. In this situation, the Director shall normally decide that sampling is required and that questionnaires will be sent only after the sampling selections is completed.

The investigating officer(s) shall **start the preparation of the questionnaires** the day following that on which the Commission decides to initiate an

investigation (or before, if there are little doubts with respect to the fact that the Commission will initiate the investigation). The following questionnaires shall be prepared:

- For the **authorities of the exporting country**: This questionnaire **shall be based on the standard template** to which changes shall be done bearing in mind the specific programmes that will be subject to the investigation. Depending on the alleged nature of the programme, the investigating officer(s) shall **choose the appropriate standard questions** (e.g. if programme 1 appears to take the form of a subsidized loan, the investigating officer(s) shall, after briefly describing the programme under investigation, insert the standard questions for programmes taking the form of subsidised loans). The investigating officer(s) may however adapt, where necessary, the relevant standard questions.
- For the **foreign producers and/or exporters**: Similar to the questionnaire for the authorities, the questionnaire for foreign producers and/or exporters will require significant changes from the **standard template**. In addition to adapting the section on the product under investigation, the section on subsidisation will require to be adapted taking into consideration the actual programmes under investigation. This adaptation shall be based on the standard template which contains standard questions for different forms of financial contributions.
- For the **domestic industry**: This questionnaire shall be **based on the standard template** to which **minor adjustments** shall be done, such as adapting the section on the product under investigation and the like product, period of investigation in tables, etc.
- For the **importers**: This questionnaire shall be **based on the standard template** to which **minor adjustments** shall be done (similar to those of the questionnaire for the domestic industry)
- For **associations of exporters, importers or domestic producers**: These questionnaires shall be **based on the standard templates** to which **minor adjustments** shall be done (similar to those of the questionnaire for the domestic industry)

- For the **users of the product considered**: This questionnaire shall be **based on the standard template** to which **minor adjustments** shall be done (similar to those of the questionnaire for the domestic industry)
- For the **suppliers of inputs (goods or services) used in the production or sale of the like product**: This questionnaire shall be **based on the standard template** to which **minor adjustments** shall be done (similar to those of the questionnaire for the domestic industry)
- For the **organisations of consumers of the product considered** (where applicable): This questionnaire shall be **based on the standard template** to which **minor adjustments** shall be done (similar to those of the questionnaire for the domestic industry)

In case of considering the need to **sample**, questionnaires for the sampling may be required. These should be prepared **based on standard templates** which should require **minor adaptation**.

Note applicable to anti-dumping investigations: In case of such investigations against countries with **centrally-planned economies, or against countries with economies in transition**, investigations may seek to assess whether foreign producers or exporters operate in market economy conditions. Where an investigation is initiated to assess this matter, a specific questionnaire shall be prepared, using the **standard template**, seeking to obtain information necessary for the required determination. **Minor adaptations** shall be made to the standard template.

Related to the previous paragraph, in case of foreign producers or exporters found not to operate in market economy conditions, normal value shall be determined based on information from **a surrogate, market economy country**. To obtain the required information, a questionnaire shall be prepared seeking to obtain cost of production and normal value information in the chosen surrogate, market economy country. This questionnaire shall be prepared **based on the standard template** to which minor adaptations should be made.

No **later than day 3 from the date of adoption of the decision to initiate an anti-subsidy investigation**, the investigating officer(s) shall **send the adapted questionnaires** to the Head of Unit and to the Director for approval. The final versions should be available **no later than day 5** from the date of adoption of the decision to initiate an anti-subsidy investigation.

Main input required for the preparation of the questionnaire:

- Standard templates

Issues related:

- Initiation notification (section **VI.4**)

VI.6: Initiation packs

Legal basis: **Article 16.3 of the Law**

Time frame: **Preparation: within 5 days from the date of adoption of the decision to initiate an anti-subsidy investigation; Sending: within 1 day from the date of publication of the notice of initiation in the Uriadoviy Kurier**

While waiting for the initiation notice to be published, the investigating officer(s) shall prepare the **initiation packs for all known interested parties**, including

- **letters notifying of the initiation;**
- a copy of the **initiation notice;**
- a copy of the **non-confidential complaint** (see comment below); and
- unless sampling is considered to be necessary, a copy of the **relevant questionnaire** (i.e. questionnaire to the government for the authorities of the country investigated; exporter questionnaire for exporters and for the authorities of the country investigated; importer questionnaire for importers; domestic industry questionnaire for domestic producers; etc.).

Packs shall be sent to all known domestic producers, importers, foreign producers/exporters, authorities of the investigated country, users, suppliers

and associations or consumer organisations. Packs should be sent in a manner where you can obtain **proof of receipt** (e.g. by courier).

It is recalled that the **non-confidential complaint** is required to be sent **only** to the authorities of the investigated country and to the foreign producers/exporters. If there are too many exporters, the **non-confidential complaint** may be made available only to the exporter associations or the foreign trade representatives. With respect to other parties, the non-confidential complaint shall be made available through access to the public file. It is recalled that the applicant should have been requested to submit as many copies of the non-confidential version of the complaint as interested parties known to the Ministry.

It is advisable (but not obligatory) that the Ministry inform Ukrainian trade representatives in the exporting countries covered by investigations so that they know what is going on, as well as to the Ukrainian WTO mission in Geneva. The notification to Ukraine's trade representatives in the exporting countries should also contain all documents, including the exporter questionnaire.

A copy of *each* letter, as well as one copy of the initiation notice and the different questionnaires must be placed both on the confidential and public files. The documents must be numbered and paginated.

Main input required for the preparation of the packs:

- Letters notifying the initiation
- Initiation notice
- Questionnaires
- Non-confidential complaint

VI.7: Confidential and public files

Many references have been made to the confidential and public files throughout this document. This section provides guidance on the start and maintenance of each of these files.

Key rules:

- The investigating officer(s) in charge of a case is/**are directly responsible for maintaining complete, updated files**, both in paper and electronic form.
- Documentation should be filed **immediately** (within 1 working day) after being registered (however, see next bullet point).
- Documentation which complies with formal requirements set forth by the Law shall be numbered sequentially and be filed in chronological order. Conversely, documentation which does **not** meet such requirements, e.g. that has been submitted in a language other than the State language or after the expiry of a deadline, **shall not be included in the respective file**.
- The investigating officer(s) is/are responsible for keeping the paper file under **their direct supervision and control at all times. The files shall be locked, except when the authorised investigating official(s) is/are using them.**
- Original copies of documentation shall be included in the confidential or public files, depending on the nature of the document at stake, which must be stored at all times.
- Working copies of the confidential and public files **may be made for the officials authorised by the Head of Unit.**

Additional rules:

- There shall a single filing methodology used in the same manner in all cases. Amendments to the filing methodology may be adopted and implemented when required.
- All documents must be date stamped.
- All documents must be numbered.
- The oldest document (the complaint) is placed in the file first and marked as document 1, the confirmation of receipt is document 2 (unless the complaint also contains a non-confidential version, in which case that will be document 2 and the letter of receipt will be document number 3) and so on.

- Pages should be numbered from the back sequentially, i.e. every document is page numbered from the back (the last page has the lowest page number and the page number increases as you move towards the front of the document).
- The investigation file contains **all** correspondence, both confidential and non-confidential.
- **All** emails or other electronic communication must be printed out and placed on the file.
- Regularly prepare an updated index indicating document names and numbers, number of pages and actual page numbers (see example below).

Example of confidential file index

Document Number	Date	Submitted by	Document title	Number of pages	File Page numbers	Confidential/ non-confidential
1	01/01/2015	BlueScope Steel	Complaint	80	1-80	C
2	02/01/2015	Ministry	Acknowledgement of receipt	1	81	C
3	09/01/2015	Ministry	Deficiency letter	4	82-85	C
4	13/01/2015	BlueScope Steel	Request for clarification on deficiency letter	2	86-87	C
5	15/01/2015	Ministry	Clarification provided	3	88-90	C
6	23/01/2015	BlueScope Steel	Updated complaint	87	91-177	C
7	23/01/2015	BlueScope Steel	Non-confidential complaint	84	178-261	NC

The general rules apply also to the public file. **Specific comments with respect to the public file:**

- The index of the public file should include certain information concerning the confidential documents filed in the confidential file (see example below). Where a document is confidential, a page must be inserted on the

public file indicating that a confidential document was submitted, along with a listing indicating the page numbers covered by the confidential document.

- Non-confidential summaries shall be submitted in line with Article 31 of the Law.

Example of public file index

Document Number	Date	Submitted by	Document title	Number of pages	File Page numbers	Confidential/ non-confidential
1	01/01/2015	BlueScope Steel	Complaint	80	1(-80)	C
2	02/01/2015	Ministry	Acknowledgement of receipt	1	81	C*
3	09/01/2015	Ministry	Deficiency letter	4	82(-85)	C
4	13/01/2015	BlueScope Steel	Request for clarification on deficiency letter	2	86(-87)	C
5	15/01/2015	Ministry	Clarification provided	3	88(-90)	C
6	23/01/2015	BlueScope Steel	Updated complaint	87	91(-177)	C
7	23/01/2015	BlueScope Steel	Non-confidential complaint	84	178-261	NC

The figures between brackets indicate documents where only an inserted page will be contained in the public file, stating that there is a confidential document, what such document relates to and the document and page numbers of that document.

VII. ANNEXES

VII.1: Checklist to assess the complaint

If no deficiency is noted, the checklist shall be included in the confidential file attached to the note stating that that complaint is properly documented. Conversely, if it is found that the complaint has deficiencies, the checklist filled out shall be sent to the applicant with the request to address them.

Checklist to review an anti-subsidy complaint

Questions (and replies to questions) marked in red are only for internal purpose and not to be shared with the applicant. Text in yellow in question A-1 provides guidance on the type of comments/reactions that may be provided

Question A-1	
Replied? If not, justification? [in case of negative reply, summarise any justification provided by the complainant for not submitting the requested information]	Supporting evidence/documentation provided in the complaint? If not, justification? [in case of negative reply, summarise any justification provided by the complainant for not submitting the requested supporting evidence]
Ministerial assessment: [If no deficiency, indicate so. Otherwise, explain the deficiency observed and how it should be addressed for the application to be considered as being properly documented]	

Question A-2	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question A-3	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question A-4.1	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question A-4.2	
Replied? If not, justification?	Supporting evidence/documentation provided

	in the complaint? If not, justification?
Ministerial assessment:	

Question A-4.3	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question A-4.4	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question A-4.5	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question A-4.6	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question A-4.7	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question A-4.8	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question A-5.1	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question B-1.1	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question B-1.2	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question B-2.1	
Are the various questions replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question B-2.2	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question B-2.3	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question B-2.4	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question B-2.5	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question B-3.1	
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Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

From the examination of the replies to section B, is there any information – besides the one sought from the applicant – which would be useful or necessary for defining correctly the imported product or the like product in the initiation notice? If so, indicate which information is anticipated to be needed as well as the possible source of information

Question C-1.1	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question C-1.2	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question C-1.3	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question C-1.4	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question C-1.5	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question C-1.6 (If applicable)	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?

Ministerial assessment:	

Question C-2.1	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question C-2.2	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question C-2.3	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question C-2.4	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

From the examination of the replies to section C, is there any other possible source of information of interested parties which should be contacted? If so, indicate.	
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Question D-2.1	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question D-2.2	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question D-2.3

Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question D-2.4

Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question D-2.5

Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question D-3

Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

From the examination of the replies to section D, is there any information – besides the one sought from the applicant – necessary for assessing the existence of *prima facie* evidence of subsidisation? If so, indicate which information is anticipated to be needed as well as the possible source of information

Question E-1

Has the information been provided separately by each applicant?
Has the information been supplied in Excel?
Has the precise source of each reply been provided?

Question E-2

Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question E-3

Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question E-4	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question E-5	
Has information on price undercutting, depression and/or suppression been submitted? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Questions E-6.1 to E-6.5, E-7, E-8, E-9, E-10, E-11, E-12, and E-13, please reply separately for each applicant company:

Question E-6.1	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question E-6.2	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question E-6.3	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question E-6.4	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question E-6.5	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question E-7	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question E-8.1	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question E-8.2.1	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question E-8.2.2	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question E-8.2.3	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question E-8.2.4	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question E-8.3	
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Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question E-9.1	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question E-9.2	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question E-10	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question E-11.1	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question E-11.2	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question E-12.1	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
Ministerial assessment:	

Question E-12.2	
Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?

Ministerial assessment:

Question E-12.3	
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Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
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Ministerial assessment:

Question E-13 (if applicable)	
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Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
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Ministerial assessment:

Question E-14	
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Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
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Ministerial assessment:

From the examination of the replies to section E:

- 1) is there any information – besides the one sought from the applicant – necessary for assessing the existence of *prima facie* evidence of injury? If so, indicate which information is anticipated to be needed as well as the possible source of information
- 2) do you anticipate the need to conduct a verification visit before the initiation of the investigation?

Question F-1	
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Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
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Ministerial assessment:

Question F-2	
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Replied? If not, justification?	Supporting evidence/documentation provided in the complaint? If not, justification?
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Ministerial assessment:

Declaration of accurateness and completeness
Has it been signed by the applicant and by each of the companies submitting the complaint?

VII.2: Excel support sheet

Explanation of the enclosed Excel sheet:

Column A: It contains references, where applicable, to the relevant section of the SOPs

Column B: List of steps and concrete actions to be undertaken, as per the SOPs. In case of need, please amend or add. When this is done, care must be taken of adding the appropriate formulae to allocate the action to the responsible officer (column C), and deadline (columns C and D)

Column C: Responsible officer. This column presents the responsible officer, in accordance with what is indicated in the SOPs. This column contains formulae which are linked to the box marked in **yellow colour**, at the end of the list of activities. Once the initials of the responsible officer are included in the box, Column C is populated automatically. In case of change of the responsible officer for a particular action, the formula for that action must be adjusted accordingly

Column D: This column includes the maximum number of days (calendar or working) within which a particular action must be concluded. It is based on what is indicated in the SOPs. This column contains input for Column E (for this reason, the column is hidden), which effectively calculates the last date when each particular action must be concluded

Column E: This column presents the specific deadline for each action. The starting dates, to be inserted manually, are the date of registration of the complaint and the first working day following that of registration of the complaint. All other dates are computed automatically, in accordance with two different formulae (one for calendar and one for working days). The use of calendar or working days follows what is indicated in the SOPs. A change to the SOPs may therefore require an adjustment of the formula for the corresponding action. The formula for working days is linked to the box marked in **blue colour**, at the end of the list of activities. The list of public holidays must be inserted manually when the Excel sheet is created for a particular investigation. Once the

box has been filled out, the calculation of the work-day is done automatically throughout the Excel table. In case of change of the deadline of a particular action (from work to calendar or vice-versa), the formula for that action must be adjusted accordingly

Column F: To be filled out by the responsible officer when the action is finished

Column G: This column contains pre-defined comments related to a particular action such as guidance to the responsible officer, where relevant, or comments from a responsible officer with respect to matters that must be known by his/her supervisors e.g. reasons justifying the non-completion of a specific task on time.

VII.3: Standard templates referred to in these SOPs

Section of the SOPs	Template	Page
IV.3	Communication to the Chairperson of the Commission informing of the receipt of a complaint	
IV.5	Communication to the applicant confirming the receipt of a complaint	
IV.6	Communication to the State Statistical Service requesting official statistics	
IV.8	Communication to the applicant detailing deficiencies in the complaint	
IV.8	Note for the file on the completeness of the complaint	
IV.10	Communication to the applicant informing him that the complaint is not properly documented	
V.2/V.3	Communication to the State Customs Service regarding the definition of the imported product, foreign producers/exporters and importers	
V.4	Communication to the applicant informing him of the lack of standing and non-initiation of an investigation	
V.9	Technical report on the initiation	
V.10	Communication to the applicant informing him that the non-confidential summary does not comply with Article 31	
V.11	Communication inviting the authorities of a foreign country to pre-initiation consultations	
V.13	Communication to the applicant regarding the consequences of the withdrawal of a complaint	
VI.2	Communication to the applicant informing that an investigation will not be initiated	
VI.3	Notice of initiation of an anti-subsidy investigation	
VI.4	Communications notifying interested parties of the initiation of an anti-subsidy investigation	
VI.5	Questionnaires: - Exporting country - Foreign producers/exporters - Foreign producers/exporters (Market economy)	

	status) - Foreign producers/exporters in the surrogate country - Domestic producers - Importers - Users - Suppliers - Associations representing the interested of foreign producers/exporters - Associations representing the interested of domestic producers - Associations representing the interested of importers - Consumer organisations - Sampling	
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